



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes that the August 19, 2003 preliminary hearing Order should be affirmed. The Board adopts the findings and conclusions set forth by the Judge as its own.

Respondent constructs roads and highways. Respondent employed claimant as a mechanic to work on its equipment. On April 9, 2003, claimant crashed the truck that he was driving home from work. Shortly before the accident, claimant had stopped to tell a coworker that the coworker was not required to work the next day. But at the time of the accident, claimant had returned to the route that he regularly took home.

Although claimant would regularly drive to different sites during the day to work on respondent's equipment, the evidence introduced to date indicates that claimant regularly began his workday at either the Buffalo or Thayer, Kansas, work sites. And on April 9, 2003, claimant began his trip home from the Buffalo site.

In *Butera*,<sup>1</sup> the Kansas Court of Appeals essentially held that driving to and from a regular job site is not considered an integral part of the job for a worker who is temporarily assigned to work at that site. The present claim is analogous. Although the Buffalo and Thayer work sites were temporary in the sense that they would no longer exist after respondent completed its road projects in the area, claimant regularly drove to those sites to begin his workday. Therefore, under K.S.A. 2002 Supp. 44-508(f) and the principles set forth in *Butera*, any accident that claimant sustained while going home from the Buffalo job site would not be compensable under the Act.

The Board finds no reason to disturb the Judge's conclusions that at the time of the accident claimant's workday had concluded and that claimant's accident did not arise out of and in the course of claimant's employment with respondent.

**WHEREFORE**, the Board affirms the August 19, 2003 Order entered by Judge Clark.

**IT IS SO ORDERED.**

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<sup>1</sup> *Butera v. Fluor Daniel Const. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. \_\_\_\_ (2001).

Dated this \_\_\_\_ day of September 2003.

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BOARD MEMBER

c: David H. Farris, Attorney for Claimant  
John R. Emerson, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director